The Phyllis Schlafly Report

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The Follies of the U.N. Treaty on Women

Statement by Phyllis Schlafly
On the United Nations Convention on the Elimination of
All Forms of Discrimination Against Women
To the Senate Foreign Relations Committee, August 2, 1990

The United Nations Convention on Discrimination Against Women, which was signed by President Jimmy Carter ten years ago, should not be resurrected from the dustbin of history and ratified. This treaty would interfere grievously with our constitutional federal-state balance of powers. It would bring federal and even international regulation into areas which are constitutionally reserved to state, local or private discretion. It would overturn or change many of our current laws. It would subject our society to attempted regulation by an international committee made up of persons who have no understanding of, or respect for, the inalienable rights enjoyed by American women.

The "Memorandum of Law" provided to the Senate in 1980 by the Department of State under Secretary Edmund Muskie (of course, the treaty is the same today as it was then) contains many revealing admissions which prove that this UN treaty is totally alien to our American Constitution and culture. Here are just a few of these State Department admissions:

- Article 1 states that the treaty intends to control "private organizations and even interpersonal relationships" and that it will "reach into the areas that are not regulated by the federal government." I can assure you that American women will not take kindly to Congress or any international body trying to regulate our interpersonal relationships.
- Article 2, sections (b), (c), (d), and (f) would require changes in our laws that register males only for military service, assign males only to combat duty, and grant veterans' preference for government jobs. The State Department Memorandum patronizingly says that these U.S. laws "have yet to be modified" and that "corrective legislation" may be necessary. The State Department apparently believes that the treaty will compel us to pass this "corrective legislation" to conform to the treaty, but the American people and Congress have repeatedly reaffirmed that they reject a mindless sameness of gender treatment in these areas.
- Article 2, section (e) would require the Congress to pass "appropriate corrective legislation" to regulate "membership in private clubs or organizations." No exceptions are indicated even for religious organizations. Hasn't Congress enough problems without taking on this type of interference in the private sector?
- Article 5 would require us "to modify the social and cultural patterns of conduct of men and women" and to give assurances about "family education." The State Department Memorandum expresses "potential concern" about this, but we should be more than just concerned. It is totally **un**acceptable for a treaty to obligate us to do these things.
- Article 10 would make it a federal responsibility to ensure the "elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education." The State Department Memorandum points out that the administration of schools and revision of textbooks are **not** federal functions in the United States. Yet, the treaty would bind us to impose federal regulations on everything pertaining to the education of women, including "encouraging coeducation," without differentiating between public and private schools.
- Article 11(d) would require Congress to legislate Comparable Worth (equal pay for "work of equal value" —**not** equal pay for equal work) — the feminist notion that government functionaries should control wages based on their own subjective notions of "value." Fortunately, Congress has never passed Comparable Worth and U.S. courts have refused to impose it. All the countries that rely on government-set wages have lower wages and lower standards of living than ours.

The State Department Memorandum did not catch all the provisions of this treaty that are offensive to Americans. Here are several of the many other objectionable provisions.

Article 4 authorizes and legitimizes quotas in employment. It states that adoption of special measures "aimed at accelerating *de facto* equality between men and women shall not be considered discrimination."

Article 11, section 2(c) would require "the establishment and development of a network of child-care facilities." One wonders if the real purpose behind the current push for this old treaty is to force on American families the Senate ABC or the House Hawkins-Downey Daycare bill because its sponsors know that President Bush will veto those bills if they go to his desk. An internationally mandated daycare network is UNacceptable to American mothers and fathers.

Article 16, section 1(e) is an abortion-on-demand provision. It would require us to allow women "to decide freely and responsibly on the number and spacing of their children." We certainly don't want some international body to legislate in the area of abortion.

Article 17 would bring us under the supervision of a "Committee" of 23 so-called "experts" elected from various countries, including the U.S.S.R. and China. The Committee would inevitably be dominated by Soviet-bloc and Third World dictatorships, without any guarantee that the United States would even be represented.

The State Department Memorandum suggests at several points that a Senate-passed "reservation" might save us from the obnoxious consequences detailed here. However, the treaty itself closes that door: Article 26 states that "a reservation incompatible with the object and purpose of the present Convention shall not be permitted."

This UN treaty may be good for other countries where women do not enjoy the rights that American women take for granted. But it would be an embarrassment for the U.S. Senate to ratify it because it is so contrary to American institutions, culture, traditions, Constitution, and relationships. If the United States Senate thinks it can offer this treaty as a gift to American women, the Senators will find that American women not only will **not** appreciate the gesture, American women will be highly offended.

Statement by Representative Barbara Vucanovich On the United Nations Convention on the Elimination of All Forms of Discrimination Against Women To the Senate Foreign Relations Committee, August 2, 1990

Mr. Chairman and distinguished Members of the Committee, I urge rejection of the United Nations Convention on the Elimination of Discrimination Against Women, which was signed by President Jimmy Carter in July 1980. For ten years, the Senate has not ratified this multilateral treaty — and with good reason.

On June 11, 1990, I joined eleven other female Republican Members of Congress in sending a letter to President Bush urging Administration support for United States ratification of the Convention. I signed onto this letter because I support equal opportunity and equal rights for all women. Moreover, I support the concept underlying the treaty. However, upon obtaining and reviewing the "Memorandum of Law" prepared by the State Department which accompanies the treaty, I have serious questions. My primary concern is that the treaty is extremely vague. The interpretation thereof can be so varied that its ratification and application could lead to several problems.

The most objectionable provision is Article 16, section 1(e), which requires us to allow women "to decide freely and responsibly on the number and spacing of their children." What does this mean? It certainly can be read to require that abortion be legal throughout nine months of pregnancy in order that women can fulfill the equality objectives of the treaty.

China, which is a signatory to the treaty and has had a representative on the Regulatory Committee, has interpreted it to allow its practice of compulsory abortion. The Chinese Communist regime contends that it is not "responsible" for a Chinese woman to give birth to more than one child. China's "population-control program" has been widely accused of being pervasively coercive. Moreover, massive documentation from a variety of sources indicates that the Chinese population officials routinely force women to undergo abortions. If a country like China can interpret this treaty to justify its population-control policies, the treaty should be amended.

Mr. Chairman, other compelling reasons exist as evidence that this treaty should not be ratified. It could subject our laws to monitoring by an international committee dominated by Communist and Third World countries which have often shown little respect for their own women. Moreover, ratification of this treaty — in its present form — could alter domestic law in the United States by requiring implementation of the Articles therein into law. Some examples of unacceptable provisions are the following:

Article 11(d), which requires "equal remuneration" for "work of equal value," would require the U.S. to enact Comparable Worth into federal law. The Congress and our Appellate Courts have repeatedly refused to legislate this notion, because it would require government wage control. Justice Anthony Kennedy, who wrote the 1985 Ninth Circuit Court Of Appeals decision in *AFSCME v. State of Washington*, noted that wage rates are determined by many factors outside the employer's control, including the availability of workers willing to do the job and the effectiveness of collective bargaining. He wrote that employers do not violate Civil Rights by "competing in the labor market," and "neither law nor logic deems the free-market system a suspect enterprise." Apparently, some persons now want to do by treaty what they cannot get Congress and the courts to impose.

Article 1 makes clear that the treaty purports to control "private organizations and even interpersonal relationships" and that it will "reach into areas that are not regulated by the federal government."

Article 2, section (e) calls into question the issue of "membership in private clubs or organizations," and again warns that "appropriate corrective legislation or reservations may be necessary in these area." I can only assume that the treaty would obligate us to pass federal legislation regulating the membership rules of wholly private clubs. More importantly, the treaty makes no exception for religious organizations, churches, or church schools, and in section (f) specifically governs "customs and practices." This would violate our valuable separation of church and state.

Article 16, referred to earlier, would obligate the federal government to take over the entire area of family law, including marriage, divorce, child custody, and property, which are currently in the exclusive domain of the States. This is definitely an area of concern.

Article 11, section 2(c) requires "the establishment and development of a network of child-care facilities." Whether or not we set up a federal daycare apparatus should be a decision for the United States Government to make without having to report to a committee comprised of representatives of foreign countries with systems vastly different from ours.

Finally, Article 24 would obligate us "to adopt all necessary measures at the national level." This section alone should be enough to cause the Senate to reject this treaty, which is so out of touch with American institutions and the traditions of State control of many of these issues. It would also change domestic law by treaty.

Mr. Chairman, I support equal rights for women, but I don't feel that American women want to submit our laws and customs to the regulation, monitoring, and interference of an international committee. The Constitution of the United States must prevail over international agreements which violate American law. We are quite capable of enacting the federal and state laws American women want without the oversight of a foreign committee. We have been a world leader on women's rights and in preventing discrimination of women in the past and will surely continue this trend in the years to come. This treaty, however, with all of its imperfections, should be rejected by the Senate.

Statement by Bruce Fein
Attorney and Syndicated Columnist
On the United Nations Convention on the Elimination of All Forms of Discrimination Against Women
To the Senate Foreign Relations Committee, August 2, 1990

Articles 1 and 2 are the Convention's virtual artillery weapons against what I conceive to be a host of provisions in the United States Constitution and federal and state laws. The former, Article 1, defines illicit discrimination to embrace any gender-based distinction by either government, organizations, or individuals that adversely impacts women in any field of endeavor, including religion.

The latter, Article 2, obligates a party to the Convention promptly to alter its constitution and laws to eradicate any discriminatory practice, as sweepingly defined in section 1.

Ratification of the Convention by the Senate would oblige the Nation under international law to engineer radical legal innovations. At present, the Constitution condemns distinctions by government based upon gender unless substantially related to furthering an important goal. Moreover, the Constitution omits restricting gender discrimination by private organizations or individuals.

The Convention would require amending the Constitution both to reach the private sector and to prohibit gender distinctions that are noninvidious, but with an adverse impact on women. The consequences would be breathtaking.

Women could neither be exempted from military draft registration or conscription nor excluded from combat duty positions. All male-only private clubs and single sex schools would be proscribed. Fetal protection policies in the workplace would be illegitimate. Mothers could not be sanctioned for reckless drug use during pregnancy that impaired the physical and mental health of their newborns. The Roman Catholic Church, the Mormon Church and other religions would be compelled to admit women into all religious offices, in contradiction to their religious creeds.

Laws banning surrogate motherhood for a fee would be dubious. The Convention would seem to prohibit private or government restrictions on abortions, including a failure to fund or offer abortion services if other medical care is subsidized or offered. That conclusion rests on the Congressional declaration in Title VII of the 1964 Civil Rights Act equating pregnancy or childbirth distinctions with gender distinctions.

The impact of the Convention on employment practices would be especially pernicious and pronounced. Women could not be excluded from jobs, even if maleness was a bona fide occupational qualification, such as an all-male prison warden. Veterans preference statutes would be illegal because they perpetuate the effects of past, wholesale exclusion of women from the military. Maternal leave would be required in all workplaces.

But the most revolutionary part of the Convention is buried in Article 11, subsection (d). It demands an upheaval in payscales to equalize remuneration in respect of work of equal value. At present, a 1985 study showed that over two-thirds of working women are employed in occupations in which at least 70 percent of the workers are female. But under the "work of equal value" standard, woolly-minded economists and social engineers would be licensed to adjust emoluments in competitive labor markets to advance their idiosyncratic conceptions of utopia.

They would address such conundrums as whether the boxing labors of Mike Tyson are of equal value as the labors of hospice nurses; whether the handsome rewards of Congressional service reflect a work value equivalent to that of female cadets, making a discount for the savings and loan bailout fiasco; whether the artistic toils of Madonna are as equally valuable as the lapidary basketball virtuosity of Michael Jordan. Perhaps Senator Simon could comment on that.

The elusive "work of equal value" lodestar of Article 11 would acutely distort employment markets and dramatically depreciate productivity.

Article 4 of the Convention casts a cloud over the 50 percent quota of women delegates to the national conventions of the Democratic Party. Articles 5 and 10 are daggers at free speech. The former would require government censorship of movies, television, books, or other forms of expression, such as 2 Live Crew's rendition of "As Nasty As They Wanna Be," which portrays women in a stereotypical or degrading fashion.

It would dictate government sponsored inculcation of the idea that husbands and wives should invariably be equally and commonly involved in child rearing.

Article 10 compels censorship of textbooks and curricula that the government believes further stereotypical thinking about the sexes. It also requires government disparagement of single sex education.

Finally, the Convention might embarrass American business abroad by requiring application of the Nation's nondiscrimination laws extraterritorially, in countries whose customs frown on prominent female participation in commerce.

In sum, the legal extremism in portions of the Convention should caution against hasty action. Fetching slogans are no substitute for sober and exact thinking and precise draftsmanship.

Question: The International Labor Organization adopts conventions with respect to working conditions. They have many conventions on discrimination and on areas of employment. All of these conventions specifically exempt the military. In international law, it is well understood that the military is considered to be *sui generis*, that is, a special situation. If an international treaty does not address the topic of the military, it means that it is not supposed to be covered at all. The point I am trying to make is this point about, if the United States ratifies the Convention, then all women will automatically have to (a) be put into combat positions in the military, or (b) be subject to the draft, is simply a straw issue. It is not relevant to this Convention at all.

Mr. Fein: If I could respond, Senator, I think that is an inadequate reading of this Convention.

Article 1 explicitly, without any ambiguity, has its application against discriminatory treatment — and here I am reading — "to apply to political, economic, social, cultural, civil or any other field." There is not any exemption for anything.

In describing in Article 2 the means that should be undertaken and pursued to prohibit any kind of discrimination, there isn't even a syllable, not even a letter, that suggests an exemption for military service.

Moreover, if it is decided that there is an unstated understanding that you don't read the words of the Convention, that certainly has not been the acceptance in the United States Supreme Court when it has interpreted treaties. Justice Scalia wrote just this last term that the words of the treaty are the foremost indicators of what was intended.

Moreover, it would seem to me that, if the idea is being suggested that, if there is something that would be shocking in a result, you simply ignore the words, that would suggest all sorts of exemptions. For instance, as my testimony indicated, what about an exemption for discrimination in religious organizations —the Mormon Church, the Roman Catholic Church or others? That sort of shocks the sensibilities of Americans who have cherished church-state separation.

Question: You are acquainted with something called a "sense of the Senate resolution," where we adopt something. It doesn't mean that we have to live up to every item in it. But it sets up some goals for us that are important. Much of what you criticize, incidentally, for example, censorship, I don't think it calls for anything like that. But there are areas where we are not complying and we are not likely to comply in the near future. But I think as a goal that we accept, it seems to me it is desirable.

Mr. Fein: Oh, I agree with that, Senator. I do not think, however, that it is proper to aspire to particular goals that you probably would not want to achieve, in reading the Convention, in terms of its language.

Let's come back to the issue of religious organizations. Some of them do discriminate against women on the basis of their religious creed. It is sort of a part of our reverence for our church/state separation that we do not require, for instance, that all positions in the Roman Catholic Church be available to women.

It is unambiguous with this Convention that you would want to eliminate that preserve of religious freedom and require that there be nongender discrimination in all religious creeds, no matter what.

I think one ought to hesitate before you jump onto a goal that has such implications. I think the problems I have raised can be dealt with sensibly. But you need a scalpel here to carve out what goals, even if we don't meet them, you want to pursue, which goals may seem to be counterproductive, and also perhaps in some sense, if you do not intend to meet the goal, put in a reservation to that intent.

We ought not to be dishonest, because the words of the Convention require us to aspire, that is, to sponsor legislation, not just sit on our hands. We ought not to treat conventions as scraps of paper, as the German Foreign Minister did about Belgium's neutrality: "Well, who cares? That treaty, that's just a scrap of paper." They are serious documents and we ought not to be frivolous about what our intentions are here. I think that is what requires a more exact examination of the language.

You suggested that you don't think Article 5 or 10 would require us to pursue some kind of censorship to eliminate what government thinks is role stereotyping in public and private life. But those are the words of Article 5. I am not just drafting this out of my head. It says that the parties "shall take appropriate measures," which includes legislation, to ensure a style of family education, recognizing that both men and women should be involved in the upbringing and the responsibility of the children. That is a mandate.

Phyllis Schlafly has served on numerous governmental commissions, including the Commission on the Bicentennial of the United States Constitution (by appointment of President Reagan), 1985-1991; the Administrative Conference of the United States, 1983-1986; and the Illinois Commission on the Status of Women, 1975-1985. She is an attorney, admitted to the practice of law in Illinois, Missouri, the District of Columbia and the U.S. Supreme Court. She is the author of 13 books, a syndicated columnist, a radio commentator, and has testified before more than 50 Congressional and state legislative commissions.

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